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COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE



ARIZONA CORPORATION COMMISSION

DATE: FEBRUARY 25, 2008

DOCKET NO: W-04286A-04-0774

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of an Opinion and Order on:

KACY PARKER dba ARROYO WATER COMPANY
(SALE OF ASSETS)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MARCH 5, 2008

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MARCH 11, 2008 and MARCH 12, 2008

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MIKE GLEASON, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF
9 KACY PARKER dba ARROYO WATER
10 COMPANY FOR A CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO PROVIDE
12 WATER SERVICE AND FOR APPROVAL OF
13 THE SALE OF ASSETS TO KACY PARKER.

DOCKET NO. W-04286A-04-0774

DECISION NO. _____

14 **OPINION AND ORDER**

15 DATE OF HEARING: June 12, 2007

16 PLACE OF HEARING: Phoenix, Arizona

17 ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes

18 APPEARANCES: Mr. Kyle Parker, on behalf of Applicant; and

19 Mr. Kevin O. Torrey, Staff Attorney, Legal Division, on
20 behalf of the Utilities Division of the Arizona
21 Corporation Commission.

22 **BY THE COMMISSION:**

23 On October 19, 2004, Kacy Parker dba Arroyo Water Company, Inc. ("Applicant," "Arroyo
24 Water" or "Company") filed an application with the Arizona Corporation Commission
25 ("Commission") in the above-captioned docket for a new Certificate of Convenience and Necessity
26 ("CC&N") and for approval of the sale of the Company's assets to Kacy Parker ("CC&N/Transfer
27 Docket").

28 By Procedural Order issued April 19, 2005, the Commission's Utilities Division ("Staff") was
directed to file a Staff Report by June 3, 2005, addressing the ownership and operational status of
Arroyo Water, as well as any ongoing issues with respect to Arizona Department of Environmental
Quality ("ADEQ") compliance and Staff's recommendation regarding the proposed transfer of assets
and issuance of a CC&N to Kacy Parker dba Arroyo Water Company.

By Procedural Order issued June 2, 2005, Staff was granted an extension to file its Staff

1 Report until June 24, 2005. Arroyo Water was ordered to file a response to the Staff Report by July
2 11, 2005.

3 On June 24, 2005, Staff filed its Staff Report stating additional information was needed from
4 Arroyo Water before Staff could complete its review and issue a recommendation regarding the
5 application. Arroyo Water failed to respond to the Staff Report as ordered.

6 By Procedural Order issued February 10, 2006, Arroyo Water was again ordered to file a
7 response to the Staff Report, this time by no later than February 24, 2006. Arroyo Water again failed
8 to respond to the directives in the Procedural Order.

9 By Procedural Order issued May 17, 2006, Staff was directed to file a recommendation for
10 appropriate action to be taken in this matter including, but not limited to, pursuing an Order to Show
11 Cause against Arroyo Water.

12 On May 31, 2006, Staff filed a Response indicating that it intended to request an Order to
13 Show Cause against the Company.

14 On December 6, 2006, Staff filed an Insufficiency Letter setting forth the specific areas in
15 which Staff deemed the Company's application to be deficient.

16 On December 22, 2006, Arroyo Water filed documentation in response to Staff's
17 Insufficiency Letter.

18 On February 7, 2007, the Company filed additional information in response to Staff's
19 requests.

20 On February 15, 2007, Arroyo Water filed a Gila County Resolution granting the Company a
21 15-year franchise to operate in the County.

22 On March 16, 2007, Staff filed a Sufficiency Letter indicating that Arroyo Water's application
23 met the sufficiency requirements in the Arizona Administrative Code.

24 By Procedural Order issued April 4, 2007, a hearing was scheduled for June 12, 2007, and the
25 Applicant was directed to publish and mail to each of its customers notice of the application and the
26 hearing date.

27 On May 14, 2007, Staff filed a Staff Report and Direct Testimony of Blessing Chukwu.

28 On June 5, 2007, Arroyo Water filed a number of documents in support of its application in

1 this proceeding.

2 On June 8, 2007, the Company filed copies of correspondence between the Parkers and Staff,
3 and between Gila County and Kacy Parker.

4 The hearing was held on June 12, 2007, as scheduled, before a duly authorized Administrative
5 Law Judge.

6 On July 30, 2007, the Applicant filed a letter and supporting documents related to a drinking
7 water analysis performed by Legend Technical Services of Arizona, Inc.

8 On October 22, 2007, the Applicant filed a letter from Kacy Parker, along with a number of
9 attachments, describing actions taken by the Company since April, 2007, to comply with Staff
10 recommendations.

11 On December 21, 2007, the Applicant filed a letter from Kacy Parker stating that issues
12 related to the Jake's Corner system have been resolved, and that the Company is now in compliance
13 with ADEQ requirements.

14 On February 1, 2008, the Company filed a letter stating that the Franchise it received from
15 Gila County was due to expire on February 6, 2008, because the Franchise was issued on February 6,
16 2007, and was contingent on Arroyo Water receiving a CC&N from the Commission within one year.

17 On February 5, 2008, Staff filed a Response to the Company's letter stating that Staff does not
18 oppose giving the Company 365 days from the date of this Decision to obtain a new Gila County
19 Franchise.

20 * * * * *

21 Having considered the entire record herein and being fully advised in the premises, the
22 Commission finds, concludes, and orders that:

23 **FINDINGS OF FACT**

24 **Background**

25 1. Arroyo Water Company, Inc., is an Arizona public service corporation engaged in
26 providing water utility service to approximately 86 customers in a portion of Gila County. According
27 to records on file with the Commission's Corporations Division, Arroyo Water is in good standing
28 (Ex. S-2, Staff Report at 1).

2. Arroyo Water is the successor-in-interest to Arroyo Water Company, Inc., dba Tonto Basin Water Company ("Tonto Basin"), a defunct public service corporation owned and previously operated by Richard Williamson (*Id.* at 1-2).

3. In Decision No. 60902 (May 22, 1998), the Commission ordered Tonto Basin, Sheer Speed, Inc. ("Sheer Speed")¹, to appear before the Commission and show cause why the Commission should not impose fines and/or other sanctions on Tonto Basin for failure to comply with Law, Commission Rule, and Commission Order. A hearing on the Order to Show Cause was held on July 16, 1998.

4. In Decision No. 61149 (October 7, 1998), Tonto Basin was ordered by the Commission to resolve certain problems within 60 days. The specified problems were related to delinquent property taxes; delinquent payment of electric bills; resolution of main extension and meter issues; resolution of complaints regarding an inability of customers to contact the company; and a requirement that Tonto Basin apply for a CC&N. Decision No. 61149 also required Tonto Basin to submit water samples required by ADEQ. The Commission imposed \$2,300 in fines on Tonto Basin.

5. On December 22, 1998, a Procedural Order was issued in Docket No. W-02337A-98-0238 ("Compliance Docket") scheduling a hearing to determine whether Mr. Williamson had complied with the directives set forth in Decision No. 61149. At the commencement of the hearing held on January 11, 1999, Mr. Williamson provided a letter indicating that the stock of Tonto Basin was part of Mr. Williamson's bankruptcy estate.

6. In Decision No. 61892 (August 27, 1999), the Commission found that Tonto Basin had satisfied some, but not all, of the problems described in Decision No. 61149. As a result, the Commission ordered Tonto Basin to, within 90 days of the Decision: pay the \$2,300 administrative fine; solve ongoing billing problems; resolve customer complaints regarding the inability to contact the company; and refund \$8,250 advanced for an uncompleted main extension. The Commission also expressed concerns in Decision No. 61892 with Mr. Williamson's failure to invest sufficient

¹ Sheer Speed is a defunct public service corporation that was the predecessor-in-interest to Tonto Basin.

capital needed for operations and improvements, as well as Mr. Williamson's bankruptcy filing. Accordingly, the Commission encouraged Mr. Williamson to sell the company to a certified operator, and indicated that if such a sale was completed within 90 days of the Decision, the administrative fine would be waived (*Id.* at 5). Finally, the Commission stated that failure to remedy the violations or sell the Company within 90 days would result additional fines of \$100 per day.

7. On June 16, 2000, the Hearing Division issued an Enforcement Order indicating that Arroyo Water had not complied with Decision Nos. 61149 and 61892, and that the Company must pay a fine of \$20,300 as of the date of the Enforcement Order, or penalties would continue to accrue.

Complaint Docket (W-03672A-01-0474)

8. On June 13, 2001, Staff filed a Complaint against Arroyo Water in Docket No. W-03672A-01-0474 (*In the Matter of the Complaint of Utilities Division Staff v. Arroyo Water Co., Inc.*) ("Complaint Docket") alleging that the Company had failed to comply with Decision Nos. 61149 and 61892, as well as the June 13, 2000, Enforcement Order.

9. On September 26, 2001, Staff filed an Amended Complaint alleging that ADEQ had filed a Notice of Violation ("NOV") against Arroyo Water for various statutory and ADEQ rule violations.

10. On November 13, 2001, a hearing was held in this matter and the record was held open, pending submission of late-filed exhibits. On December 5, 2001, the Company filed several documents.

11. On March 15, 2002, a Procedural Order was issued directing Staff to file, by no later than March 25, 2002, its position regarding the documents filed on December 5, 2001, a statement of the current status of the charges in the Complaint, and Staff's recommended disposition of the matter.

12. On March 19, 2002, Staff filed a Motion to Re-Open the Record. By Procedural Order issued April 2, 2002, the record in this matter was re-opened and a hearing was scheduled for May 9, 2002.

13. At the May 9, 2002, hearing, Staff was directed to investigate Arroyo Water's CC&N and the Company's claim to be in compliance with a Consent Order issued by ADEQ. On June 4, 2002, Staff submitted the results of its inquiry. Staff stated that, according to ADEQ, Arroyo Water

1 was in compliance with all aspects of the Consent Order with the exception of payment of a fine.

2 14. On April 14, 2004, a Procedural Order was issued directing Staff to file a statement
3 regarding, at a minimum, the status of Arroyo Water's compliance with any prior Consent Orders
4 with ADEQ, the Company's compliance with ADEQ testing and water quality requirements, whether
5 Staff believed the record should be re-opened to receive additional testimony or evidence in the
6 docket, and Staff's overall recommendation for resolving the Complaint Docket.

7 15. On May 24, 2004, Staff filed a Memorandum replying to the April 14, 2004,
8 Procedural Order. Staff indicated, among other things, that ADEQ had closed a prior Consent Order
9 against Arroyo Water but it appeared the system improvements that were the basis for the Consent
10 Order were never completed. Staff claimed further that, based on its recent investigation, Kyle and
11 Kacy Parker appeared to have purchased the assets of Arroyo Water from Richard Williamson, the
12 prior owner, yet no application for transfer of assets or for a CC&N under the Parkers' ownership had
13 been filed with the Commission. Staff recommended that the record be reopened; that the Parkers be
14 ordered to file a formal application for approval of the sale of assets/transfer of ownership & CC&N
15 or for a new CC&N and sale of assets; and that the Parkers determine the appropriate business
16 structure of the water utility under their ownership.

17 16. On June 25, 2004, a Procedural Order was issued directing Arroyo Water and/or Kyle
18 and Kacy Parker to file by July 15, 2004, a response to the comments/allegations set forth in Staff's
19 May 24, 2004 Memorandum. The June 25, 2004 Procedural Order also scheduled a hearing for July
20 30, 2004 to address the issues raised by Staff's Memorandum.

21 17. No response was received to the June 25, 2004, Procedural Order and, on July 20,
22 2004, a Procedural Order was issued vacating the July 30, 2004, hearing date and directing Staff to
23 file an updated report regarding the ownership and operational status of Arroyo Water, including
24 ongoing issues with respect to ADEQ compliance and any other relevant information.

25 18. On July 30, 2004, Staff filed an updated Memorandum regarding the status of Arroyo
26 Water and ADEQ compliance. According to Staff, Mr. Williamson claimed to have sold the
27 Company to the Parkers, although Mr. Williamson apparently remained the Certified Operator for
28 Arroyo Water. Staff also reported that there were no current ADEQ consent orders regarding Arroyo

1 Water.

2 19. On August 6, 2004, Kacy Parker submitted a response to Staff's Memorandum.
3 According to Mr. Parker's filing, he has owned and managed the Company since 2003 and testing
4 was being done by an employee of Williamson Engineering. Mr. Parker also indicated that he
5 intended to comply fully with ADEQ requirements to avoid future violations and that he intended to
6 file a request for sale of assets and for a new CC&N.

7 20. By Procedural Order issued September 13, 2004, the Parkers were directed to file, by
8 October 15, 2004, an application for sale of assets and for transfer of the CC&N for Arroyo Water.

9 **CC&N/Transfer Docket (W-04286A-04-0774)**

10 21. On October 19, 2004, Kacy Parker dba Arroyo Water filed an application in the
11 above-captioned docket for a new CC&N and for approval of the sale of assets to Kacy Parker.

12 22. By Procedural Order issued April 19, 2005, Staff was directed to file a Staff Report by
13 June 3, 2005, addressing the ownership and operational status of Arroyo Water, as well as any
14 ongoing issues with respect to ADEQ compliance and Staff's recommendation regarding the
15 proposed transfer of assets and issuance of a CC&N to Kacy Parker dba Arroyo Water Company.

16 23. On June 24, 2005, Staff filed its Staff Report stating additional information was
17 needed from Arroyo Water before Staff could complete its review and issue a recommendation
18 regarding the application. Arroyo Water failed to respond to the Staff Report as ordered.

19 24. By Procedural Order issued February 10, 2006, Arroyo Water was again ordered to
20 file a response to the Staff Report, this time by no later than February 24, 2006. Arroyo Water again
21 failed to respond to the directives in the Procedural Order.

22 25. By Procedural Order issued May 17, 2006, Staff was directed to file a
23 recommendation for appropriate action to be taken in this matter including, but not limited to,
24 pursuing an Order to Show Cause against Arroyo Water.

25 26. On May 31, 2006, Staff filed a Response indicating that it intended to request an Order
26 to Show Cause against the Company².

27 _____
28 ² On October 26, 2006, the Commission issued an Order to Show Cause ("OSC") against Arroyo Water in Docket No.
W-04286A-06-0399, based on Staff's Complaint that: the Company had failed to provide timely responses to the June 24,

1 27. On December 6, 2006, Staff filed an Insufficiency Letter setting forth the specific
2 areas in which Staff deemed the Company's application to be deficient.

3 28. On December 22, 2006, Arroyo Water filed documentation in response to Staff's
4 Insufficiency Letter.

5 29. On February 7, 2007, the Company filed additional information in response to Staff's
6 requests.

7 30. On February 15, 2007, Arroyo Water filed a Gila County Resolution granting the
8 Company a 15-year franchise to operate in the County.

9 31. On March 16, 2007, Staff filed a Sufficiency Letter indicating that Arroyo Water's
10 application met the sufficiency requirements in the Arizona Administrative Code.

11 32. By Procedural Order issued April 4, 2007, a hearing was scheduled for June 12, 2007,
12 the Applicant was directed to publish and mail to each of its customers notice of the application and
13 the hearing date.

14 33. On May 14, 2007, Staff filed a Staff Report and Direct Testimony of Blessing
15 Chukwu.

16 34. On June 5, 2007, Arroyo Water filed a number of documents in support of its
17 application in this proceeding.

18 35. On June 8, 2007, the Company filed copies of correspondence between the Parkers
19 and Staff, and between Gila County and Kacy Parker.

20 36. The hearing was held on June 12, 2007, as scheduled, before a duly authorized
21 Administrative Law Judge.

22 37. According to Staff, the Arroyo Water system³ consists of one 90 gallons per minute
23 ("gpm") well, one 11,000 gallon storage tank, one 2,500 gallon pressure tank, a booster pump, and
24 distribution system serving 86 customers. The Company claims that once the transfer has been

25 2005, Staff Report issued in the above-captioned CC&N/Transfer application docket (W-04286A-04-0774) regarding,
26 among other things, a total of 18 customer complaints that had been received regarding billing issues, inability to contact
27 the Company, and low pressure and water quality. On November 22, 2006, and December 13, 2006, the Company filed
28 letters and attachments detailing customer complaints during 2005 and 2006, as well as the actions taken by the Company
to resolve the complaints.

³ Arizona Department of Water Resources ("ADWR") Identification No. 55-805621

1 approved, it intends add 24,000 gallons of additional storage at the well site, 24,000 gallons of
2 storage and a booster pump at a site on the system's east side, and replace the existing pressure tank
3 with a new 2,000 gallon pressure tank (Ex. S-2, Staff Report at 3).

4 38. Staff stated that Arroyo Water's non-account water could not be determined because
5 the Company's well is not equipped with a well meter which records water pumped (*Id.* at 4).

6 39. The Staff Report indicates that the Company was purchased by Kyle and Kacy Parker
7 on March 25, 2003, from Richard Williamson, for \$45,000. The sale was conditioned on the
8 Commission's approval, and that all fines or levies must be removed by Mr. Williamson prior to final
9 transfer. The Company operates under the corporate name Arroyo Water Company, Inc., with Kacy
10 Parker serving as president and his father, Kyle Parker, serving as vice-president. Kyle Parker is not
11 involved in the Company's day-to-day operations, although he and his son each own 50 percent of
12 the Company's stock (*Id.*).

13 40. The Arroyo Water system is located near the Town of Punkin Center, approximately
14 43 miles from Payson, in Gila County. All customer security deposits were transferred to the Parkers
15 under the sale agreement. There are no refunds due on meter or line installations, and there are no
16 main extension agreements in existence for the Company (*Id.* at 5).

17 41. Staff indicated that ADEQ regulates the Arroyo Water system under ADEQ Public
18 Water System Identification No. 04-083. At the time of the Staff Report, the latest ADEQ Drinking
19 Water Status Report, dated July 14, 2006, stated that ADEQ could not determine if the system was
20 delivering water that meets water quality standards based on the lack of consumer confidence reports
21 for the years 2002 through 2005; lack of completion of baseline lead and copper monitoring; and lack
22 of annual nitrate analyses for 2004 and 2005. ADEQ also reported that the system had inadequate
23 storage (*Id.*).

24 42. The Staff Report states that ADEQ inspected the Arroyo Water system on November
25 3, 2006, and, as a result of the inspection, issued an NOV on December 15, 2006. The NOV was
26 issued for failing to have adequate water storage, failing to have a certified operator, and failing to
27 maintain the pressure tank. The NOV also listed deficiencies for failure to monitor for coliform in
28 December 2005 and January 2006, and for failing to take repeat coliform samples in July and August

1 2006. On March 7, 2007, ADEQ issued a response to Arroyo Water's submissions related to the
2 December 15, 2006, NOV. ADEQ indicated that compliance had been achieved for all of the
3 monitoring and reporting deficiencies, and that the Company had employed a certified operator.
4 However, ADEQ's response stated that Arroyo Water had failed to achieve compliance with water
5 storage and facility maintenance requirements (*Id.* at 5-6).

6 43. According to Staff, Arroyo Water's system is in compliance with the current 10 parts
7 per billion ("ppb") arsenic limit imposed by the U.S. Environmental Protection Agency ("EPA").
8 However, Staff indicated that the Company had not, at the time of the Staff Report, filed a
9 curtailment plan tariff or a backflow prevention tariff.

10 44. Based on its review, Staff recommended that the Commission deny the application for
11 transfer of the assets and CC&N to Kyle and Kacy Parker dba Arroyo Water due to the failure of
12 Arroyo Water to comply with Decision No. 67231, as well as noncompliance with ADEQ
13 requirements for monitoring and reporting. Alternatively, Staff recommended that, if the
14 Commission determines it is in the public interest to grant the proposed transfer of assets and CC&N
15 to Arroyo Water, such approval should only be granted subject to the following conditions:

- 16 a) The Company should be required to charge the rates and charges
17 currently in effect for Tonto Basin Water Company. In addition to
18 collection of its rates and charges, the Company may collect from its
19 customers a proportionate share of any privilege, sales or use tax
20 pursuant to A.A.C. R14-2-409(D)(5).
- 21 b) The Company should be required to file with Docket Control, as a
22 compliance item in this docket, a schedule of its approved rates and
23 charges using the name Arroyo Water Company, Inc., within 30 days
24 from the effective date of this decision.
- 25 c) The Company should be required to file a general rate application, if it
26 wishes to increase its rates, using the most recent 12-month period for
27 its test period.
- 28 d) The Company should be required to maintain its books and records in
accordance with the NARUC Uniform System of Accounts and file an
affidavit attesting to such by December 31, 2007.
- e) The Company should be required to file with Docket Control, as a
compliance item in this docket, a copy of the ADEQ Approval of
Construction ("AOC") for the storage additions and other
improvements by December 31, 2007.
- f) The Company should be required to install a well meter on its well and
demonstrate compliance with this requirement by September 30, 2007.

- 1 g) The Company should be required, beginning October 2007, to record
2 the water pumped each month to determine the level of water loss. If
3 after 12 months the Company determines that the level of water loss is
4 in excess of 10 percent, the Company must take immediate action to
5 reduce the level to 10 percent or less, and shall report the results of its
6 water loss by filing a report with Docket Control by November 2008.
7 Staff must then file a response to the Company's report, along with
8 any recommendations, by December 31, 2008.
- 9 h) The Company should be required to file with Docket Control, as a
10 compliance item in this docket, for a period of 12 months following
11 this Decision, documentation showing that the monthly monitoring
12 required by ADEQ to determine compliance with the maximum
13 contaminant level for total coliform bacteria has been conducted and
14 that the Company's water quality is in compliance with ADEQ rules.
- 15 i) The Company should be required to make all corrections to ADWR
16 registration records to reflect Arroyo Water's ownership of the Arroyo
17 system well, and also demonstrate compliance with this requirement
18 by December 31, 2007.
- 19 j) The Company should be required to file a curtailment tariff within 45
20 days of the effective date of this Decision. The tariff should be
21 docketed as a compliance item in this docket for the review and
22 certification of Staff.
- 23 k) The Company should be required to file a backflow prevention tariff
24 within 45 days of the effective date of this Decision. The tariff should
25 be docketed as a compliance item in this docket for the review and
26 certification of Staff.
- 27 l) The Company should be required to file with Docket Control, as a
28 compliance item in this docket, a certification, receipt, and/or canceled
check from the Gila County Treasurer's Office that all liens have been
paid, within 45 days of the effective date of this Decision.
- m) The Commission's Decision should be considered null and void, after
due process, if the Company fails to meet the timelines set forth in
Staff's recommendations.

45. At the hearing, Kyle Parker testified on behalf of the Company. Mr. Parker stated that he was willing to abide by Staff's recommendations to gain approval of the asset transfer and issuance of a CC&N (Tr. 44-53). He testified that he would undertake the additional storage recommended by Staff and indicated that the necessary engineering had already been completed. He also stated that the necessary funds had been set aside to construct an additional 48,000 gallons of storage capacity (Tr. 28, 47-48). Mr. Parker indicated that the Company was in compliance with ADEQ monitoring requirements (Tr. 34). He also testified that property taxes of approximately \$11,000 were owed to Gila County, of which Mr. Williamson was obligated to pay approximately

1 \$7,000. However, Mr. Parker stated that he was willing to pay the entire amount of back taxes to
2 Gila County and pursue recovery of Mr. Williamson's obligation directly with him (Tr. 39-41).

3 46. Staff witness Del Smith testified that if the Company adds the planned 48,000 gallons
4 of storage, for a total storage capacity of 59,000 gallons, it would have adequate storage for current
5 customers and projected growth for at least the first five years. He also indicated that the Company
6 has sufficient production capacity to serve current customers plus an additional 178 customers. He
7 stated that there was still a need for the well meter and production monitoring to measure the extent
8 of water losses on the system (Tr. 66-72).

9 47. Staff witness Blessing Chukwu testified that Staff recommends denial of the
10 application based on the Company's failure to attain compliance with prior Commission Orders and
11 with ADEQ requirements. She pointed specifically to Mr. Parker's lack of compliance with a
12 Commission Order involving the Jake's Corner Water System, which is also owned and operated by
13 Kacy Parker⁴. However, she indicated that if the Commission approves the application, Staff is
14 willing to assist the Company in complying with the various recommendations set forth in the Staff
15 Report as a condition of approval (Tr. 93-95).

16 48. In a filing docketed on June 5, 2007, the Company responded to each of the findings
17 and recommendations contained in the Staff Report. The Company indicated the following: it has
18 complied with all ADEQ monitoring requirements; filed the schedule of approved rates in the name
19 of Arroyo Water; agreed to file the ADEQ Approval of Construction for the storage tanks and
20 facilities improvements; agreed to install a well meter and conduct the recommended monitoring
21 proposed by Staff; that it has filed the required form and fee with ADWR to reflect the change in
22

23 ⁴ Staff indicated in its Staff Report that a Complaint and Petition for Order to Show Cause was filed by Staff on April 17,
24 2007 (Docket No. W-04249A-04-0249 et al.), against Kacy Parker dba Jake's Corner Water System ("Jake's Corner") for
25 failure to comply with Decision No. 67231 (September 7, 2004). That Decision approved the transfer of assets and
26 CC&N of Jake's Corner to Kacy Parker, contingent upon Jake's Corner's installation of a storage tank, among other
27 things. On May 21, 2007, the Commission issued a Show Cause Order in Decision No. 69583 for failure to install the
28 additional storage capacity. Jake's Corner then filed an opinion by ADEQ which stated that the existing 5,000 gallon
storage/pressure tank complied with ADEQ regulations and was sufficient to serve the Jake's Corner service area
(approximately 20 customers). On September 17, 2007, Staff issued a Staff Report stating that the previously required
storage tank "is not a critical requirement at this time," and recommended that the storage tank issue be revisited in Jake's
Corner's next rate and/or financing application, and that it be required to file a rate case by no later than March 31, 2011.
Staff therefore requested that the Commission dismiss the Order to Show Cause approved by Decision No. 69583. By
Procedural Order issued September 19, 2007, a previously scheduled hearing was vacated.

1 ownership to Arroyo Water; has filed the curtailment and backflow tariffs; and, upon being granted
2 the CC&N, will pay the outstanding taxes to Gila County within 30 days of approval and document
3 such payment with the Commission.

4 49. Through letters and attached documents filed with the Commission on July 30, 2007,
5 October 22, 2007, and December 21, 2007, the Company reiterated that it has complied with all of the
6 conditions recommended by Staff, with the exception of the installation of additional storage capacity
7 and a new pressure tank. Specifically, the Company indicated that it has: updated its billing cards and
8 timely billed customers; addressed the Jake's Corner storage issue; submitted curtailment and
9 backflow prevention tariffs; filed the required schedule of rates; filed the requisite information with
10 ADWR to reflect the change of ownership; and obtained a Gila County Franchise. With respect to
11 ADEQ compliance, the Company attached a letter from ADEQ dated March 7, 2007, that it is in
12 compliance with all ADEQ requirements with the exception of the storage and pressure tank issues.

13 50. On February 1, 2008, the Company filed a letter stating that the Franchise it received
14 from Gila County was due to expire on February 6, 2008, because the Franchise was issued on
15 February 6, 2007, and was contingent on Arroyo Water receiving a CC&N from the Commission
16 within one year.

17 51. On February 5, 2008, Staff filed a Response to the Company's letter stating that Staff
18 does not oppose giving the Company 365 days from the date of this Decision to obtain a new Gila
19 County Franchise.

20 **Conclusion**

21 52. Although much of the responsibility for the Arroyo Water system's (fka Tonto Basin
22 Water Company, fka Sheer Speed, Inc.) lengthy history of non-compliance with Commission Orders
23 and ADEQ rules lies with Richard Williamson, the Parkers displayed a similar disregard for
24 regulatory compliance upon assuming operational control of the Company in 2003, and thereafter.
25 As described above, the Parkers repeatedly failed to respond to directives to provide information to
26 Staff, and failed or refused to acknowledge receipt of Procedural Orders, even for those Orders sent
27 via Certified Mail. As is well documented in the record, the Parkers have also had recurring ADEQ
28 compliance issues.

1 53. It appears that the Parkers have more recently gained a greater appreciation for the
2 important responsibilities that are required in the operation of a public service corporation, especially
3 one that provides water service to captive customers. For example, the Company claims to have
4 updated its billing cards and timely billed customers; resolved prior customer complaints; addressed
5 the Jake's Corner storage issue; submitted curtailment and backflow prevention tariffs; filed the
6 required schedule of rates; filed the requisite information with ADWR to reflect the change of
7 ownership; obtained a Gila County Franchise; and come into compliance with all ADEQ
8 requirements (with the exception of the storage and pressure tank issues). Mr. Parker also testified
9 under oath that the engineering plans for adding 48,000 gallons of storage were complete; that the
10 funds needed to construct the additional storage capacity and replace an existing pressure tank have
11 been set aside; and that he would pay all delinquent property taxes to Gila County within 30 days of a
12 Decision in this matter. He further agreed to abide by all of the recommendations set forth in the
13 Staff Report.

14 54. Despite recent improvements in responsiveness, the past actions of Arroyo Water must
15 be taken into consideration with respect to whether the Parkers are fit and proper to hold a CC&N to
16 provide water utility services. We remain concerned that, once they are granted a CC&N for Arroyo
17 Water, the Parkers will return to prior form and fail to maintain compliance with all regulatory
18 requirements imposed by this Commission, ADEQ, and other governmental entities.

19 55. However, based on the entirety of the record, we find that the application for the
20 transfer of assets and a CC&N filed by Kyle and Kacy Parker dba Arroyo Water Company, Inc.,
21 should be granted, subject to a number of conditions. First, to the extent that Arroyo Water has not
22 previously filed documentation that evidences compliance with Staff's recommendations described in
23 Finding of Fact No. 44, the Company should comply with Staff's recommendations within the
24 timeframes set forth in the Staff Report⁵. Each of the requirements discussed in the Staff Report must
25 be met to Staff's satisfaction.

26 56. Arroyo Water must comply with each of the Staff recommendations set forth below,
27

28 ⁵ For certain of the timelines that have expired, revised dates for compliance are set forth below and in the ordering paragraphs of this Decision.

1 subject to the modified dates (set forth in bold print):

- 2 a) The Company should be required to charge the rates and charges
3 currently in effect for Tonto Basin Water Company. In addition to
4 collection of its rates and charges, the Company may collect from its
5 customers a proportionate share of any privilege, sales or use tax
6 pursuant to A.A.C. R14-2-409(D)(5).
- 7 b) The Company should be required to file with Docket Control, as a
8 compliance item in this docket, a schedule of its approved rates and
9 charges using the name Arroyo Water Company, Inc., within 30 days
10 from the effective date of this decision.
- 11 c) The Company should be required to file a general rate application, if it
12 wishes to increase its rates, using the most recent 12-month period for
13 its test period.
- 14 d) The Company should be required to maintain its books and records in
15 accordance with the NARUC Uniform System of Accounts and file an
16 affidavit attesting to such by **August 31, 2008**.
- 17 e) The Company should be required to file with Docket Control, as a
18 compliance item in this docket, a copy of the ADEQ Approval of
19 Construction ("AOC") for the storage additions and other
20 improvements by **August 31, 2008**.
- 21 f) The Company should be required to install a well meter on its well and
22 demonstrate compliance with this requirement by **May 30, 2008**.
- 23 g) The Company should be required, beginning **June 2008**, to record the
24 water pumped each month to determine the level of water loss. If after
25 12 months the Company determines that the level of water loss is in
26 excess of 10 percent, the Company must take immediate action to
27 reduce the level to 10 percent or less, and shall report the results of its
28 water loss by filing a report with Docket Control by **November 2009**.
Staff must then file a response to the Company's report, along with
any recommendations, by **December 31, 2009**.
- h) The Company should be required to file with Docket Control, as a
compliance item in this docket, for a period of 12 months following
this Decision, documentation showing that the monthly monitoring
required by ADEQ to determine compliance with the maximum
contaminant level for total coliform bacteria has been conducted and
that the Company's water quality is in compliance with ADEQ rules.
- i) The Company should be required to make all corrections to ADWR
registration records to reflect Arroyo Water's ownership of the Arroyo
system well, and also demonstrate compliance with this requirement
by **August 31, 2008**.
- j) The Company should be required to file a curtailment tariff within 45
days of the effective date of this Decision. The tariff should be
docketed as a compliance item in this docket for the review and
certification of Staff.
- k) The Company should be required to file a backflow prevention tariff
within 45 days of the effective date of this Decision. The tariff should
be docketed as a compliance item in this docket for the review and

certification of Staff.

- 1) The Company should be required to file with Docket Control, as a compliance item in this docket, a certification, receipt, and/or canceled check from the Gila County Treasurer's Office that all liens have been paid, within 45 days of the effective date of this Decision.

57. In addition to compliance with Staff's recommendations, as modified above, we believe certain additional requirements are necessary to ensure ongoing compliance by Arroyo Water. We will therefore require Arroyo Water to: file documentation evidencing the final sale and transfer of assets to Arroyo Water within 30 days; obtain a \$5,000 performance bond or letter of credit as a condition of approval of the Company's application; file Annual Reports for all years through 2007 (if it has not already done so); file a rate case by no later than May 1, 2012, based on a 2011 test year; obtain a Gila County Franchise within 365 days of the effective date of this Decision; and comply on an ongoing basis with all ADEQ monitoring and reporting requirements and file in this docket every six months, by June 30 and December 31 of each year (beginning June 30, 2008), an affidavit attesting to such compliance, along with supporting documentation.

58. In order to facilitate compliance with the directives and conditions set forth in this Decision, we will waive any existing fines or penalties previously imposed on Arroyo Water or its predecessors⁶. In doing so, however, we expect that Mr. Parker will comply with each of the conditions set forth in this Decision, and will continue to remain in compliance with all applicable rules and regulations of this Commission and other regulatory bodies. If Mr. Parker and/or Arroyo Water fail to comply with such rules and regulations, or fail to cooperate fully with Staff, we will take any and all actions necessary to ensure compliance including, but not limited to, imposition of penalties and appointment of an interim operator.

59. Because an allowance for the property tax expense of Arroyo Water is included in the Company's rates and will be collected from its customers, the Commission seeks assurances from the Company that any taxes collected from ratepayers have been remitted to the appropriate taxing authority. It has come to the Commission's attention that a number of water companies have been unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,

⁶ This waiver does not apply to the obligation to pay delinquent taxes, penalties or fees owed to any other governmental entity.

1 some for as many as twenty years. It is reasonable, therefore, that as a preventive measure Arroyo
2 Water should annually file, as part of its Annual Report, an affidavit with the Utilities Division
3 attesting that the company is current in paying its property taxes in Arizona.

4 **CONCLUSIONS OF LAW**

5 1. Arroyo Water Company, Inc., is a public service corporation within the meaning of
6 Article XV of the Arizona Constitution and A.R.S. §40-281 et seq.

7 2. The Commission has jurisdiction over Arroyo Water and the subject matter of the
8 application.

9 3. Notice of the application was provided in accordance with law.

10 4. There is a public need and necessity for water utility service in the proposed service
11 area.

12 5. Subject to compliance with the conditions described hereinabove, Arroyo Water is a
13 fit and proper entity to receive a CC&N for provision of water utility service in the service area more
14 fully described in Attachment A hereto.

15 **ORDER**

16 IT IS THEREFORE ORDERED that the application of Kacy Parker dba Arroyo Water
17 Company, Inc., for a Certificate of Convenience and Necessity and for approval of the sale and
18 transfer of assets to the Company is hereby approved subject to the conditions set forth herein.
19 Approval of the application is expressly contingent on compliance with the conditions described in
20 this Order and this Decision will be considered null and void, after due process, if the Company fails
21 to comply with the conditions specified herein.

22 IT IS FURTHER ORDERED that Kacy Parker dba Arroyo Water Company, Inc., shall file
23 with Docket Control, as a compliance item in this docket, documentation evidencing the final sale
24 and transfer of assets to Arroyo Water, within 30 days of the effective date of this Decision.

25 IT IS FURTHER ORDERED that Kacy Parker dba Arroyo Water Company, Inc., shall be
26 required to charge the rates and charges currently in effect for Tonto Basin Water Company. In
27 addition to collection of its rates and charges, the Company may collect from its customers a
28 proportionate share of any privilege, sales or use tax pursuant to A.A.C. R14-2-409(D)(5).

1 IT IS FURTHER ORDERED that Kacy Parker dba Arroyo Water Company, Inc., shall file
2 with Docket Control, as a compliance item in this docket, a schedule of its approved rates and charges
3 using the name Arroyo Water Company, Inc., within 30 days from the effective date of this Decision.

4 IT IS FURTHER ORDERED that Kacy Parker dba Arroyo Water Company, Inc., shall file a
5 general rate application, if it wishes to increase its rates, using the most recent 12-month period for its
6 test period. The Company shall file a rate case by no later than May 1, 2012, based on a 2011 test
7 year.

8 IT IS FURTHER ORDERED that Kacy Parker dba Arroyo Water Company, Inc., shall
9 maintain its books and records in accordance with the NARUC Uniform System of Accounts and file
10 an affidavit attesting to such by August 31, 2008.

11 IT IS FURTHER ORDERED that Kacy Parker dba Arroyo Water Company, Inc., shall file
12 with Docket Control, as a compliance item in this docket, a copy of the ADEQ Approval of
13 Construction for the necessary storage additions and other improvements by August 31, 2008.

14 IT IS FURTHER ORDERED that Kacy Parker dba Arroyo Water Company, Inc., shall install
15 a well meter on its well and demonstrate compliance with this requirement by May 30, 2008.

16 IT IS FURTHER ORDERED that Kacy Parker dba Arroyo Water Company, Inc., shall,
17 beginning June 2008, record the water pumped each month to determine the level of water loss. If
18 after 12 months the Company determines that the level of water loss is in excess of 10 percent, the
19 Company must take immediate action to reduce the level to 10 percent or less, and shall report the
20 results of its water loss by filing a report with Docket Control by November 2009. Staff must then
21 file a response to the Company's report, along with any recommendations, by December 31, 2009.

22 IT IS FURTHER ORDERED that Kacy Parker dba Arroyo Water Company, Inc., shall file
23 with Docket Control, as a compliance item in this docket each month, for a period of 12 months
24 following this Decision, documentation showing that the monthly monitoring required by ADEQ to
25 determine compliance with the maximum contaminant level for total coliform bacteria has been
26 conducted and that the Company's water quality is in compliance with ADEQ rules.

27 IT IS FURTHER ORDERED that Kacy Parker dba Arroyo Water Company, Inc., shall
28 comply on an ongoing basis with all ADEQ monitoring and reporting requirements and file in this

1 docket every six months, by June 30 and December 31 of each year (beginning June 30, 2008), an
2 affidavit attesting to such compliance, along with supporting documentation.

3 IT IS FURTHER ORDERED that Kacy Parker dba Arroyo Water Company, Inc., shall make
4 all corrections to ADWR registration records to reflect Arroyo Water's ownership of the Arroyo
5 system well, and also demonstrate compliance with this requirement by August 31, 2008.

6 IT IS FURTHER ORDERED that Kacy Parker dba Arroyo Water Company, Inc., shall file a
7 curtailment tariff within 45 days of the effective date of this Decision. The tariff should be docketed
8 as a compliance item in this docket in a form acceptable to Staff.

9 IT IS FURTHER ORDERED that Kacy Parker dba Arroyo Water Company, Inc., shall file a
10 backflow prevention tariff within 45 days of the effective date of this Decision. The tariff should be
11 docketed as a compliance item in this docket in a form acceptable to Staff.

12 IT IS FURTHER ORDERED that Kacy Parker dba Arroyo Water Company, Inc., shall file
13 with Docket Control, as a compliance item in this docket, a certification, receipt, and/or canceled
14 check from the Gila County Treasurer's Office that all liens have been paid, within 30 days of the
15 effective date of this Decision.

16 IT IS FURTHER ORDERED that Kacy Parker dba Arroyo Water Company, Inc., shall file
17 with Docket Control, as a compliance item in this docket, a copy of a Franchise from Gila County to
18 operate in the Company's approved CC&N area.

19 IT IS FURTHER ORDERED that approval of Kacy Parker dba Arroyo Water Company,
20 Inc.'s application for a Certificate of Convenience and Necessity and transfer of assets shall be
21 expressly contingent on the Company's procurement of either a Performance Bond equal to \$5,000 or
22 an irrevocable sight draft Letter of Credit, in a form acceptable to Staff, in the amount of \$5,000, and
23 the Company shall submit the original Performance Bond or Letter of Credit with the Commission's
24 Business Office, with copies of the Bond or Letter of Credit filed with Docket Control, as a
25 compliance item in this docket, within 45 days of the effective date of this Decision. The
26 Commission may draw on the Performance Bond or Letter of Credit, on behalf of, and for the sole
27 benefit of the Companies' customers, if the Commission finds, in its discretion, that the Companies
28 are not providing adequate service. The Commission may use the Performance Bond or Letter of

1 Credit funds, as appropriate, to protect the Company's customers and the public interest and take any
2 and all actions the Commission deems necessary, in its discretion, including, but not limited to
3 appointing an interim operator. The Performance Bonds or Letters of Credit shall be maintained and
4 copies of the same filed annually on the anniversary date of the initial filing until further Order of the
5 Commission or ten years have passed, whichever is sooner, at which time the Performance Bond or
6 Letter of Credit requirement may be terminated upon approval of an application filed by the
7 Company's for termination.

8 IT IS FURTHER ORDERED that Kacy Parker dba Arroyo Water Company, Inc., shall file
9 Annual Reports for all years through 2007 within 45 days of the effective date of this Decision.

10 IT IS FURTHER ORDERED that Kacy Parker dba Arroyo Water Company, Inc., shall
11 annually file as part of its Annual Report, an affidavit with the Utilities Division attesting that the
12 Company is current in paying its property taxes in Arizona.

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IT IS FURTHER ORDERED that any existing penalties previously imposed by the Commission against Arroyo Water Company, Inc., or its predecessors in interest, are hereby waived subject to the Company's compliance with the conditions and directives discussed herein.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN _____ COMMISSIONER _____

COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2008.

DEAN S. MILLER
INTERIM EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: KACY PARKER dba ARROYO WATER COMPANY

2 DOCKET NO.: W-04286A-04-0774

3

4 Kacy Parker dba Arroyo Water Company, Inc.
5 HC 6, Box 1048-H
6 Payson, AZ 85541
7 **(VIA REGULAR AND CERTIFIED MAIL)**

8 Richard W. Williamson
9 Arroyo Water Company, Inc.
10 P.O. Box 231
11 Young, AZ 85554
12 **(VIA REGULAR AND CERTIFIED MAIL)**

13 Christopher Kempley, Chief Counsel
14 Legal Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, AZ 85007

18 Ernest G. Johnson, Director
19 Utilities Division
20 ARIZONA CORPORATION COMMISSION
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22 Phoenix, AZ 85007

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EXHIBIT "A"

**PROPOSED CCN AREA
FOR
ARROYO WATER COMPANY, INC.**

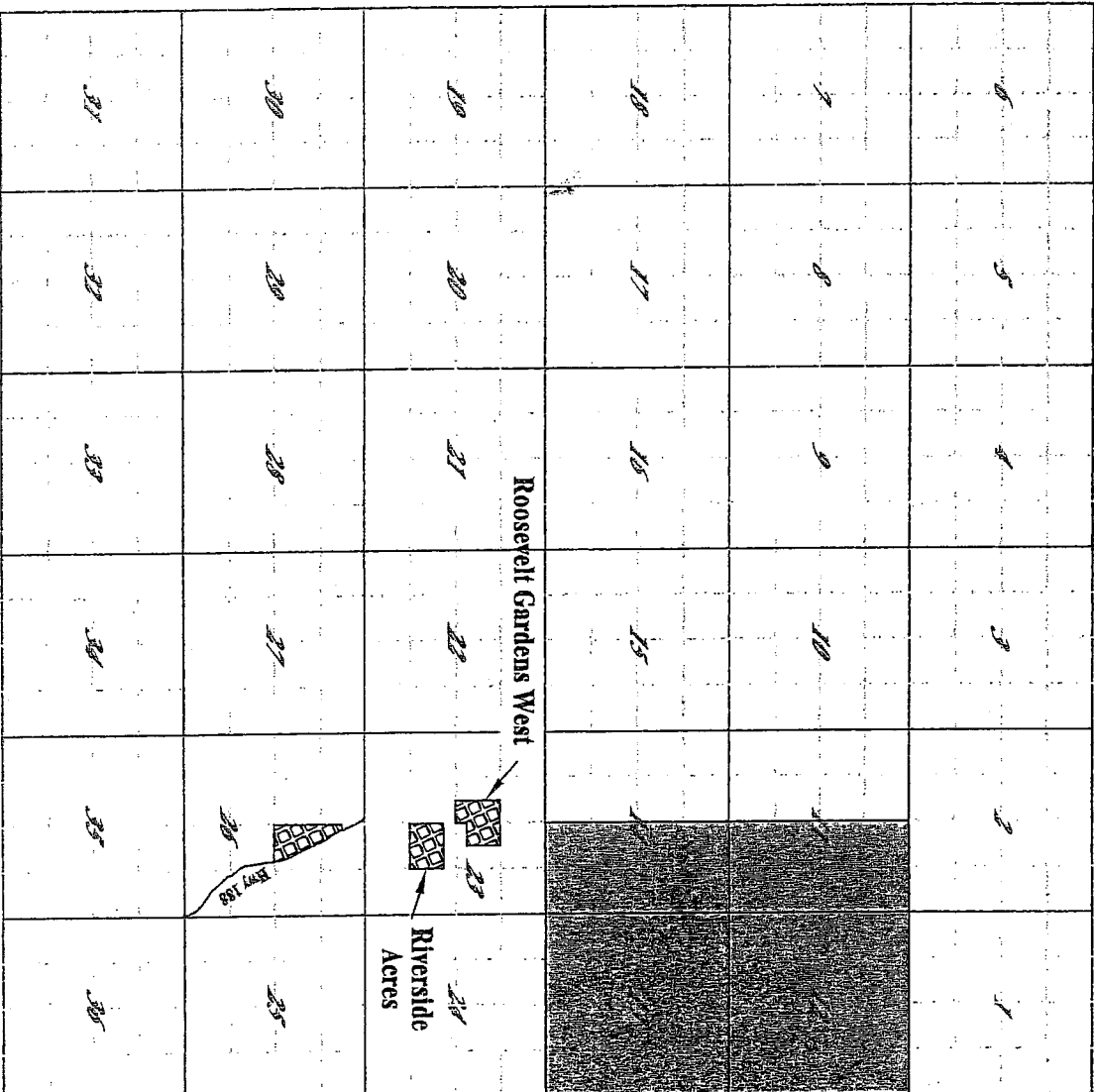
JUNE, 2003

**The East half of Section 11, all of Section 12, all of Section 13 and the East half of
Section 14 of Township 6 North, Range 10 East, Gila and Salt River Base Meridian.**

EXHIBIT "A"


COUNTY: Gila

RANGE 10 East



TOWNSHIP 6 North

 W-3515 (4)
Tonto Basin Water Company, Inc.


Arroyo Water Company, Inc.
Docket No. W-4286-04-774
Application for CC&N

Map No. 6

DECISION NO. _____